IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.788 OF 2003

Saiprasad Suresh Ghosalkar ..Petitioner
V/s
Anant Jagdish Sarnaik & Anr. ..Respondents.

Mr. Samir Suryawanshi for the petitioner

Mr. Amit Shete for respondent No.1.

Mr. P.S. Hingorani, A.P.P.for the respondent NO.2.

CORAM : S.C. DHARMADHIKARI, J.

DATE : 28TH SEPTEMBER, 2006.

P.C.

. Heard Mr. Suryawanshi for the petitioner and Mr. Shete appearing for the respondent No.1. The complainant is before me. He had filed a Criminal Complaint against the first respondent bearing Reg. Criminal Case No.515/1999 in the Court of Judicial Magistrate, F.C. Kolhapur. He has alleged commission of offences punishable under Sections 379, 403,406,409, and 420 of Indian Penal Code.

2. From a perusal of this complaint it is apparent that the petitioner as well as, the first respondent were partners and carrying on business in partnership.

The partnership business was of publication of a Weekly "Police Time" and on account of differences and disputes over the management and administration of partnership business that complaint was filed, after a notice was issued on 6th January, 1998, by the petitioner.

3. After verification statement was recorded, the learned Magistrate proceeded to issue process summoning the accused. This order was passed on 16th September, 1999.

4. The petitioner also applied for issuance of search warrant which application was also granted on 18th September, 1999. Aggrieved by these orders, the first respondent went in Revision before the Sessions Court, Kolhapur and the Criminal Revision Application No. 217/1999 was allowed by the learned Additional Sessions Judge on 5th of May, 2003. Consequently, the order issuing process and search warrant have been set aside. It is these orders, which are subject matter of challenge in the present petition under Article 227 of the Constitution of India r/w Section 482 of Code of Criminal Procedure.

5. The learned Advocate appearing for the petitioner vary ably submitted that the complaint must read as a whole and so read, it discloses not just the fact that the petitioner was aggrieved on account of some difference and dispute but because partnership properties were appropriated to himself by the first respondent. The complaint therefore, discloses the necessary ingredients and the offence was made out prima facie. He submits that no elaborate discussion was warranted at such stage and the learned Sessions Judge therefore, was in error in interfering with the order of the learned Magistrate.

6. Upon perusal of the order under challenge and the complaint, I am of the view, that the learned Sessions Judge was right in holding that the complaint does not disclose as to how a partnership property which was being managed and administered for the partnership business was entrusted to the respondent No.1 exclusively and in the absence of any such plea, it would not be proper to hold that a partnership property being in the hand or taken possession of for management and administration of behalf of the firm, any offence is committed.

7. Thus, the complaint does not disclose commission of any offence much less those alleged. I see no error in the order of the learned Sessions Judge, when he interferes with the order of the learned Magistrate issuing process. so also when the complaint not disclose commission of any offence, issuance of search warrant would amount to conducting a roving and fishing enquiry which is impermissible in law. Therefore, neither there is any error of law apparent on the face of the record nor perversity so as to warrant any interference in writ jurisdiction. The petition is dismissed. To enable the petitioner to institute appropriate proceedings, ad interim order passed by this Court on 28th May, 2003, shall continue for a period of 3 weeks. However, such continuation is without prejudice to the rights and contentions of both sides.

(S.C.DHARMADHIKARI, J.)